IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.524 OF 2007
IN
CRIMINAL APPEAL NO.413 OF 2007

Apsar @ Sheru Anwar Rahim ...Applicant
Vs.
State of Maharashtra (Nagpada PS) ;; ...Respondent

Mr. Y.M.Choudhary, Advocate for Applicant
Mrs. S.D. Shinde, A.P.P for Respondent State

CORAM: DR. S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.
DATED: 19TH JULY, 2007

P.C.

1. Heard the learned Counsel for applicant and the learned A. P. P for the Respondent State.

2. The applicant has been convicted for an offence punishable under Section 302 of the Indian Penal Code. By this application, he prays for bail.

3. The learned Counsel appearing on behalf of the applicant pointed out that there is a patent inconsistency in three

dying declarations. Since the conviction primarily based on the aforesaid three dying declarations, the same ought not to have been accepted as inherently flawed and unreliable.

4. Over and above, the learned Counsel for the applicant pointed out that even the recovery of the blood-stained clothes, the panch witness categorically states that he does not know whether the clothes belong to the accused or not. The learned Counsel also pointed out that there is absolutely no evidence to indicate that the applicant had borrowed a sum of Rs.15,000/- from the deceased and as a result of non-payment of the same, the applicant had murdered the deceased. He pointed out that the learned Judge has clearly erred in observing in paragraph 27 of the Judgment that it is proved by the prosecution that on account of nonpayment of money, accused Sheru and his associates assaulted the victim with an intention to kill him and with pre-planning of finishing his life and caused murder of the victim.

5. The learned A. P. P is unable to controvert the aforesaid submissions of the learned Counsel for the applicant. In the aforesaid facts and circumstances, we grant bail to the applicant.

6. The applicant to deposit cash bail amount of Rs.10,000/-

and in addition provide a surety in the same amount in the trial Court.

7. The applicant shall also report Nagpada Police Station on the first Monday of every month till the disposal of this Appeal.

8. We make it clear that the surety referred herein above should be a local surety and the applicant shall execute the P.R. Bond before the trial Court.

9. The above application stands disposed of.

(SMT. ROSHAN DALVI, J.) **(DR. S. RADHAKRISHNAN, J.)**